

**STATE OF INDIANA – COUNTY OF ST. JOSEPH  
IN THE ST. JOSEPH CIRCUIT, SUPERIOR AND PROBATE COURTS**

---

**Notice of Proposed Local Rule Amendment and Finding Good Cause to  
Deviate From Established Schedule  
June 15, 2021**

---

The judges of the St. Joseph Circuit, Superior, and Probate Courts, pursuant to Trial Rule 81(B), give notice of amendments to the local court rules and find good cause to deviate from the schedule for amending local rules under Trial Rule 81(D). All new text is shown by underlining and deleted text is shown by ~~striketrough~~. Supreme Court approval is required for Local Rules concerning Caseload Allocation Plan and Special Judge and may not take effect until approved by the Supreme Court.

Notice has been given to the public by posting on the website of the St. Joseph Courts and on the Indiana Judicial Website, and by furnishing a copy to the officers of the St Joseph County Bar Association. Comments may be made until July 15, 2021, to:

Lisa A. Plencner, Court Administrator of the St. Joseph Circuit Court, Attn: Public Comment on Local Rules, St. Joseph County Courthouse, 101 S. Main Street, Room 223, South Bend, Indiana, 46601; or [lplencner@sjcindiana.com](mailto:lplencner@sjcindiana.com)

These rule amendments will be effective on January 1, 2022, and after approval of the Indiana Supreme Court for those rules requiring approval.

DATED this 15<sup>th</sup> day of June, 2021 on behalf of the Judges of St. Joseph County.

*Hon. John E. Broden  
Judge, St. Joseph Circuit Court*

*Hon. Elizabeth Hurley  
Chief Judge, St. Joseph Superior Court*

*Hon. Jason Cichowicz  
Judge, St. Joseph Probate Court*

**APPENDIX A TO LOCAL GENERAL AND ADMINISTRATIVE RULES,  
100 SERIES  
CASELOAD ALLOCATION PLAN  
FOR COURTS IN ST. JOSEPH COUNTY, INDIANA**

I. Organization of the Courts of St. Joseph County:

As of ~~January 1, 2011~~ July 1, 2015, the Courts of St. Joseph County are organized and assigned judicial officers as follows:

(1) St. Joseph Circuit Court – one (1) judge and three (3) magistrate judges;

(2) St. Joseph Superior Court – eight (8) judges and four (4) magistrate judges; and

(3) St. Joseph Probate Court – one (1) judge and three (3) magistrate judges.

II. Designation of Judicial Officers to Hear Civil, Criminal and Juvenile Cases:

(1) Judicial Officers Designated to Hear Civil Cases: Civil Cases (other than small claims matters), shall be heard by the judge and the magistrate judges of the Circuit Court and by the judges and/or magistrate judges of the Superior Court designated by the Chief Judge of the Superior Court to hear civil cases;

(2) Judicial Officers Designated to Hear Felony Criminal Cases: Felony criminal cases shall be heard by the judges and/or magistrate judges of the Superior Court designated by the Chief Judge of the Superior Court to hear felony criminal cases;

(3) Judicial Officers Designated to Hear Small Claims Cases: Small claims matters shall be heard by the judges and/or magistrate judges of the Superior Court designated by the Chief Judge of the Superior Court to hear small claims matters;

(4) Judicial Officers Designated to Hear Traffic and Misdemeanor Cases: Unless otherwise assigned to a felony criminal court for judicial economy because a defendant has pending felony, misdemeanor and/or probation revocation matters, traffic and misdemeanor matters shall be heard by the judges and/or magistrate judges of the Superior Court designated by the Chief Judge of the Superior Court to hear traffic and misdemeanor matters.

(5) Judicial Officers Designated to Hear Paternity (JP), Delinquency, (JD), CHINS (JC), Juvenile Status (JS), Juvenile Guardianship cases (GU), Termination of Parental Rights cases (JT), and Adoption Cases (AD): shall be assigned to the Judge of the Probate Court unless the Judge assigns the matter to be heard by a magistrate judge of the Probate Court. Notwithstanding any other provision of this rule, cases designated ES, EU, GU and TR may continue to be filed in any of the courts consistent with traditional practice in St. Joseph County.

(6) Judicial Officers Designated to Hear Title IV-D Cases: Pursuant to LR71-FL00-430 et seq., Title IV-D Cases may be assigned to the Title IV-D Court and heard by a magistrate judge of the Circuit, Superior, or Probate Court designated to preside over Title IV-D hearings.

### III. Protocol for Assignment of Cases Among the Courts of St. Joseph County:

(1) Civil cases (other than ~~SC~~ small claims, JD, JC, JS, JM, AD, and JT): With the exception of paternity cases (JP) discussed in subparagraph 5 above, and cases traditionally assigned to the Probate Court as the court with traditional exclusive jurisdiction over juvenile cases (CHINS, delinquency, dependency, adoption, etc.) or to the Circuit Court (license reinstatement, name changes, health

department enforcement cases, TS and TP, etc.), civil cases (other than SC small claims) shall be assigned randomly among the judges and/or magistrate judges of the Circuit Court and the Superior Court designated to hear civil matters. ~~as follows~~ “Small claims” means SC cases and all EV cases filed on the small claims docket. The cases are assigned as follows:

- A. Circuit Court shall receive a total of 60% of all upper civil filings and Superior Court shall receive 40% of all upper civil filings.
- B. Four (4) civil judges in Superior Court shall receive as follows: the three Superior judges sitting in South Bend shall each receive approximately 28% of the 40% of the upper civil filings, and the judge sitting in Mishawaka shall receive approximately 16% of the 40% of the upper civil filings.
- C. Circuit Court shall have a Mishawaka Division with one (1) Circuit Court magistrate presiding and a South Bend Division with the Circuit Court judge and two (2) magistrates presiding.
- D. Superior Court shall have a Mishawaka Division with one (1) Superior Court judge presiding and a South Bend Division with three (3) Superior Court judges and four (4) magistrate judges presiding.
- E. Civil cases (other than SC small claims cases) may be filed in Circuit Court and Superior Court in South Bend or Mishawaka, Indiana as follows:
  - (a) The City of Mishawaka, the School City of Mishawaka, or a resident of the City of Mishawaka where all defendants are residents of the City of Mishawaka shall designate all of their cases for filing with the Mishawaka Division of Superior and Circuit Courts. The Clerk shall assign these cases on an alternating bases to ensure equal distribution of those filings between the Mishawaka Divisions of those courts.

(b) All attorneys and business entities with their principal places of business and all individuals with their principal residences located east of Logan Street but within St. Joseph County may either:

- i. file their civil cases (other than SG small claims cases) without designation, in which case they will be assigned randomly to the Mishawaka Division of the Superior and Circuit Courts or to one (1) of the three (3) judges of the civil division of the Superior Court or the judge of the Circuit Court; or
- ii. file their civil cases (other than SG small claims cases) for filing in the Mishawaka Division of Superior and Circuit Courts in which case they will be assigned on an alternating basis to ensure equal distribution of those filings between the Mishawaka Divisions of those courts.

F. For all civil case filings other than SG small claims cases not designated for filing in the Mishawaka Divisions of the Circuit and Superior Court, a seventeen (17) case assignment rotation cycle shall be utilized with each seventeen (17) cases assigned as follows:

Ten (10) cases for Circuit Court (approximately 60%)

Seven (7) for Superior Court (approximately 40%), with 2 out of 7 going to each of the South Bend Superior Court judges and 1 out of 7 going to the Mishawaka Superior Court judge.

Circuit Court shall from time to time designate three (3) cases (17.65% of the Circuit cases) or four (4) cases (23.53% of the Circuit cases) of each of the ten (10) Circuit Court cases in each assignment rotation cycle to go to the Circuit Court magistrate judge sitting in Mishawaka to which direct filings will be

added in order to achieve whatever total percentage of cases the Circuit Court judge wants in the Circuit Court Mishawaka Division.

The Chief Judge of the Superior Court shall, from time to time, reallocate civil cases from the Mishawaka Division to the South Bend Division to ensure there is an approximate weighted caseload allocation among the four (4) judges of the Superior Court's Civil Division.

(2) Felony Criminal Cases: With the exception of criminal cases that must be assigned to the Circuit Court by L71-CR2.2-303.1 or -303.2, felony criminal cases shall be assigned randomly among the judges and/or magistrate judges of the Superior Court designated to hear criminal cases as follows:

- A. The Superior Court judge assigned to Drug Court will be assigned all felony level 5 and 6 drug cases (given a "D01" designation) but no other level 6 felonies.
- B. The remaining level 6 felonies will be randomly and evenly assigned to the other three (3) Superior Court criminal judges.
- C. All MR and all other felony cases (levels 1 through 5) will be randomly and evenly assigned to the four (4) Superior Court criminal judges.

However, and notwithstanding this method of random assignment, in all felony criminal cases, except MR cases, where co-defendants are charged, cases shall be reassigned to a single judge or magistrate judge, as follows: (a) where co-defendants have been equally assigned to different judges, the judge having the lowest assigned cause number shall be assigned/reassigned all co-defendant cases; or (b) in the event that co-defendants have been unequally assigned to different judges, the judge having the greatest number of co-defendants shall be assigned/reassigned all co-defendant cases. Further, the Chief Judge of the

Superior Court may reassign cases involving a defendant who has a pending case to the judge presiding over the earliest assigned cause number. The Chief Judge of the Superior Court may reassign MR cases or other felony cases where such reassignment is in the interest of judicial economy or dictated by the weighted caseload balancing requirements.

(3) SG Small Claims Cases: Superior Court has a Small Claims Division with two (2) locations: South Bend and Mishawaka. All SG small claims cases shall be assigned to the Small Claims Division in South bend and assigned to that Division at the South Bend location, except for the following:

- A. All SG small claims cases filed by the City of Mishawaka, the School City of Mishawaka, or a resident of the City of Mishawaka where all defendants are residents of the City of Mishawaka, shall be designated for filing in Mishawaka and shall be assigned to the Small Claims Division of Superior Court in Mishawaka.
- B. All SG small claims cases filed by attorneys and business entities with their principal places of business and individuals with their principal residences located east of Logan Street but within St. Joseph County may, at the filer's discretion:
  - a. File their SG small claims cases without designation, in which case they will be assigned to the South Bend Small Claims Division; or
  - b. Designate their SG small claims cases for filing in the Mishawaka Division, in which case they will be assigned to the Small Claims Division's Mishawaka location.
- C. The four (4) Superior Court magistrates work equally for each one of the eight (8) Superior Court judges; therefore, for case allocation reporting purposes: each Superior Court judge is assigned: 1/8<sup>th</sup> of all SG small claims cases assigned to the Small Claims Division's

South Bend location. The Superior Court civil judge sitting in Mishawaka is also assigned all:

- a. PO cases designated for filing in Mishawaka. These cases will be assigned by the Clerk to the Small Claims Division's Mishawaka location;
- b. All TR cases designated for filing in Mishawaka;
- c. All EU, ES and EM cases designated for filing in Mishawaka; and
- d. All adult GU cases designated for filing in Mishawaka

(4) Traffic and Misdemeanor Cases: Superior Court has a Traffic and Misdemeanor Division located in South Bend. All TM, CM, IF, and OV cases shall be assigned to the Traffic and Misdemeanor Division. All CM, IF, or OV cases in which a jury demand is granted shall be assigned to the Superior Court in Mishawaka for all further proceedings.

The four (4) Superior Court magistrates work equally for each one of the eight (8) Superior Court judges; therefore, their handling of all traffic and misdemeanor cases shall be assigned as follows for case allocation reporting purposes:

- A.  $1/8^{\text{th}}$  of all CM, IF, and OV cases (less new misdemeanor cases sent to Mishawaka Traffic and Misdemeanor due to jury trial requests) will be assigned equally to each of the eight (8) Superior Court judges.
- B. In addition, the Superior Court judge in the Mishawaka Division will also be assigned, for case allocation purposes, all CM, IF, and OV cases transferred to Mishawaka Division for jury trial requests.



(5) Mental Health Cases: All MH cases will be divided equally among the four (4) Superior Court civil judges.

(6) Paternity, CHINS, Delinquency, Dependency, and Adoption Cases: All paternity, CHINS, delinquency, dependency, and adoption cases shall be filed in Probate Court.

(7) Separate petitions for specialized driving privileges shall be filed in the St. Joseph Circuit Court; however, petitions for post conviction relief (PCR) or requests for relief from suspensions entered in a pending criminal cause of action shall be filed before the court that issued the judgment of sentence or interlocutory suspension.

(8) Protective Order (PO) Cases: Petitions for civil orders of protection alleging domestic violence (DV), sexual assault, or stalking shall be filed in the Circuit Court and assigned to the Civil Protective Order Court, with the exception of the following matters:

a. Cases filed directly with a Court that has already assumed jurisdiction over a dissolution of marriage, paternity, child in need of services (CHINS), or delinquency proceeding involving the parties;

b. Cases designated for filing in the Mishawaka Division of Superior Court;

c. Cases filed as plenary cases in South Bend. Plenary cases shall be randomly assigned based on subparagraph (1) *supra*. PO cases may be filed at any Courthouse in St. Joseph County, the Family Justice Center, and any other place designated by the Judicial Executive Committee (as defined in DR04-AR00-3). PO hearings shall be set according to a written schedule that shall be developed by the Judicial Executive Committee or by the regularly presiding judge of the applicable court. Workplace violence cases shall be randomly assigned based on subparagraph (1) *supra*.

IV. Exceptions to the Protocol for Assignment of Cases:

(1) Mass Filing of Collection Cases (other than ~~SG~~ small claims):

Upon request and designation by the Judge of the Circuit Court and the Chief Judge of the Superior Court, a lawyer or law firm may be approved to make mass filing of collection cases (other than ~~SG~~ small claims). Unless otherwise directed by the Judge of the Circuit Court or the Chief Judge of the Superior Court based on weighted caseload balancing requirements or otherwise, cases filed by a lawyer or law firm approved for mass filing shall be assigned to the Circuit Court.

(2) Special Judge or Transfer: Nothing in these local rules shall be interpreted to prevent a party from taking a change of judge or requesting transfer of a case as otherwise authorized by statute or rule of court.

(3) Temporary or Permanent Assignment of Cases: Nothing in these local rules shall be interpreted to prevent the regularly presiding judge of a Court from assigning a case on a temporary or permanent basis to a Magistrate Judge, Special Judge, Senior Judge, Temporary Judge, Judge Pro Tem, Referee, or other duly appointed judicial officer.

(4) Caseload Balancing: Nothing in these local rules shall be interpreted to prevent the Judge of the Circuit Court, the Chief Judge of the Superior Court or the Judge of the Probate Court, from reassigning a case for the purpose of caseload balancing based on the weighted caseload criteria or other caseload balancing criteria.

(5) Emergency or Exigent Circumstances: Nothing in these local rules shall be interpreted to prevent the Judge of the Circuit Court, the Chief Judge of the Superior Court, or the Judge of the Probate Court, either jointly or individually, from assigning a case based on emergency or exigent circumstances.

V. Authority and Effective Date:

(1) This Caseload Allocation Plan is adopted pursuant to the requirements of A.R. 1 (E) and LR71-AR1-107.1

~~(2)~~ The effective date of this amended Caseload Allocation Plan is ~~January 1, 2021.~~ January 1, 2022.

**Rule LR71-TR79-216. Special Judge Selection.**

**216.1. Selection of Agreed Special Judge.** For civil cases other than those specified in Rule 216.3, Within within seven (7) days of the notation in the Chronological Case Summary of a judge granting a motion for change of judge or recusing or disqualifying from a case pursuant to T.R. 79(C) or otherwise, the parties shall attempt to select a special judge by agreement. As required by T.R. 79(D), the parties shall have seven (7) days within which to file a written agreement:

(a) selecting an eligible special judge or reporting that an agreement was not reached; or,

(b) proceeding directly under § 216.2 in a case where a change of judge has been granted or under § 216.3 in a case where the judge has recused or disqualified

If no agreement is filed within seven (7) days, the selection of a special judge shall proceed as provided by § 216.3 of this local rule

**216.2. Selection of Special Judge in DR, DN, and DC cases**

Notwithstanding any other provision of this Rule, within seven (7) days of the notation in the Chronological Case summary of a judicial officer granting a motion for change of judge or recusing or disqualifying from a case with a DR, DN, or DC designation, pursuant to T.R. 79(C) or otherwise, the regularly presiding judicial officer shall direct the Clerk to

randomly select a special judge from a list of all eligible Judges or Magistrates of the Circuit and Superior Courts.

**216.3. Failure of Special Judge to Accept or to Qualify; Failure to Meet Selection Deadlines; Random Selection. In the event :**

- (a) a special judge who was selected by agreement fails to accept after being selected or is otherwise disqualified or excused from the case, or
- (b) the striking conference is not conducted in a timely manner or fails to produce a special judge, or
- (c) the parties stipulate to the random selection of a special judge, or
- (d) the judge before whom the case was pending has recused or disqualified,

the regularly presiding ~~judge~~ judicial officer shall direct the Clerk to randomly select a special judge from a list of all eligible judicial officers, which may include Judges, Magistrate Judges or Senior Judges Judges or Magistrate of the Circuit and Superior Courts.

**Rule 303.3 Other Criminal Proceedings**

(8) (a) In the event that the State files a new Information against a defendant with a pending case, the judge presiding over the new case shall transfer the new case to the judge presiding over the older, pending case. At the discretion of the judge presiding over the new case, that judge may decline to transfer the new case.

(b) In the event that the State files a new Information against a defendant with a pending petition to revoke probation or placement, the judge presiding over the pending petition to revoke probation or placement, shall transfer that case to the

judge presiding over the new case. At the discretion of the judge presiding over the petition to revoke probation or placement, that judge may decline to transfer that case.

### **304.3 Personal Presence of Defendants.**

~~All felony defendants shall be present in Court at every stage of the proceedings conducted in open Court. All felony defendants shall be personally present at every stage of the proceedings including hearing on motions.~~

(a) The personal presence of the Defendant in court, in person or by video, is required at initial hearings, pretrial conference/record hearings, hearings at which the Defendant enters a guilty plea, pretrial motion hearings, and sentencing hearings. The personal presence of the Defendant in court, in person, is required for bench trials and jury trials.

(b) For all hearings at which the Defendant's presence in person or by video is not required, counsel for the Defendant may appear in court on the Defendant's behalf, with the Defendant appearing telephonically. Counsel for the Defendant is responsible for providing the presiding judge with the Defendant's contact information for the Defendant's telephonic participation.

(c) In lieu of the Defendant's telephonic appearance at hearings pursuant to subparagraph (b), counsel for the Defendant may appear on the Defendant's behalf if Counsel has filed prior to the hearing a written certification confirming that counsel has had regular contact with the Defendant, has the Defendant's correct contact information, and is able to and shall inform the Defendant of what transpired at the hearing and the Defendant's next court date. Counsel's certification shall constitute prima facie evidence of the Defendant's knowledge of his or her court date in the event the Defendant fails to appear for any subsequent hearing scheduled at the hearing attended only by counsel. If insufficient evidence

exists to rebut the presumption of the Defendant's knowledge of the hearing, the court may issue a bench warrant for the failure to appear.

(d) As a condition of pretrial release, the Defendant shall provide the Clerk of the Court and Counsel for the Defendant with the Defendant's current address and telephone number. If the Defendant owns and/or uses a cellular telephone for telephonic communication, the Defendant shall provide the cellular telephone number in order to receive text notifications concerning upcoming court hearings. The Defendant shall notify the Clerk of the Court and Counsel of any changes in address and/or telephone number within forty-eight (48) hours of the change.

#### **308.4 Withdrawal of a Public Defender Appointment.**

(a) Withdrawal of a Public Defender Appointment. The appointment to serve as a public defender in any single criminal proceeding shall terminate upon entry of sentencing order and dispositional order the appearance of counsel shall be withdrawn from the Court's case management system, unless a person appointed as public defender makes a request of the court to the contrary. At sentencing or disposition, the Defendant shall be notified of the termination of the Public Defender appointment.

(b) The Public Defender in a Juvenile Delinquency case (JD) shall remain appointed until closure of the case.